not at such a time and place tell so and so, such and such a thing, and answered that she did not, she may on re-examination state what she did at the time and place say to the same person on the subject, if it is relevant to the issue, although no proof of such contradictory statement has yet been made. Here the question at issue upon which a foundation for proving a contradictory statement had been laid was precisely the same as that upon which the whole case turned. J. F. M.

COMMONWEALTH *et al. v.* CAMP MFG. CO.

Jan. 14, 1909. Rehearing Denied March 1, 1909.

[63 S. E. 978.]

1. Taxation (§ 327*)—Assessment—Land and Timber.—Const. 1902, § 171 (Code 1904, p. cclxiii), provides for a reassessment of real estate in the year 1905 and every fifth year thereafter. Code 1887, § 441, as amended by Acts 1889-90, p. 137, c. 180 (Code 1904, p. 234), requires the assessors to examine all the land and lots within their respective counties or districts, and assess the cash value thereof, and to comply with section 472 of the Code of 1887 (Code 1904, p. 246). Code 1887, § 472, as amended by Acts 1889-90, p. 137, c. 180, provided that, if the land is held by one person and the standing timber by another, the commissioner should determine the relative value of each, and assess the several owners with the value of their respective interests, but that, if the land and timber were owned by the same person, the commissioner should ascertain the value of the land including the timber. Held, that an assessment in 1905 was properly made by assessing the land and timber separately, and such assessment furnished a proper basis for a taxation for 1906 and 1907, and the validity of such assessment was not affected by the question whether Acts March 17, 1906 (Acts 1906, p. 555, c. 319), repealed section 472 of the Code.

[Ed. Note.—For other cases, see Taxation, Dec. Dig. § 327.* 12 Va.-W. Va. Enc. Dig. 782.]

2. Taxation (§ 327*)—Assessment—Statutory Provisions.—Const. 1902, § 172 (Code 1904, p. cclxiii), requires the General Assembly to provide for the special and separate assessment of coal and other mineral land, and that until such special assessment is made the land shall be assessed under general laws, but does not authorize a special assessment of standing timber apart from the land. Held, that Code 1887, § 472, as amended by Acts 1889-90, p. 137, c. 180 (Code 1904, p. 246), providing that, if the surface of land is held by one person and the

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

standing timber by another, they shall be separately assessed, is not unconstitutional as not expressly authorized by the Constitution.

[Ed. Note.—For other cases, see Taxation, Dec. Dig. § 327.* 13 Va.-W. Va. Enc. Dig. 91, et seq.]

3. Taxation (§ 327*)—Assessment—Statutory Provisions.—Acts 1908, p. 331, c. 220, provides for an assessment by the commissioners of the revenue of the several counties at shorter intervals than five years of standing and merchantable timber apart from the land upon which it stands, where the timber is owned by one person and the surface of the land by another. Held, that this act was not passed because there was no authority of law for such an assessment, but was merely intended to change the agency for making the assessment and the duration thereof as the basis of taxation, and does not invalidate an assessment already made on land and timber separately.

[Ed. Note.—For other cases, see Taxation, Dec. Dig. § 327.* 13 Va.-W. Va. Enc. Dig. 91, et seq.]

Error to Circuit Court, Brunswick County.

Action by the Camp Manufacturing Company against the Commonwealth and others. Judgment for plaintiff, and defendants bring error. Reversed, and judgment entered dismissing petition.

E. P. Buford and the *Atty. Gen.*, for plaintiffs in error.
Edward R. Turnbull, Jr., for defendant in error.

CARDWELL, J. This writ of error brings under review two orders of the circuit court of Brunswick county; the one exonerating the defendant in error from the payment of taxes to the commonwealth and levies to the county of Brunswick for the year 1906, upon standing merchantable timber trees owned by the defendant in error, separate and apart from the surface of the land upon which they were standing, and the other exonerating the defendant in error from like taxes and levies upon standing merchantable timber trees for the year 1907.

These orders were predicated upon the view that there was no authority of law for the levy and collection of the taxes and levies in question upon standing merchantable timber trees assessed separately from the surface of the land upon which they were growing, and to sustain that view the decision of this court in Vansant, Kitchen & Co. *v.* Commonwealth, 108 Va. 135, 60 S. E. 753, is greatly relied on.

In that case the opinion does say that upon the passage of the act of March 17, 1906 (Acts 1906, p. 555, c. 319, § 1), all au-

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

thority ceased to tax trees separate and apart from the land on which they stand; but it is not said that there was no authority for so taxing standing timber trees prior to the act just mentioned. On the contrary, what was said in the opinion had reference to the fact that by the act of March 17, 1906, the statutory authority for the assessment and taxation of standing timber trees by the commissioners of the revenue separate and apart from the land upon which they stand was repealed. The assessment called in question in that case was made by the commissioner of the revenue without any authority appearing in the record.

The question, therefore, presented in the case before us, is whether the assessments and levies complained of here were made without authority of law.

Section 171 of the present Constitution (Code 1904, p. cclxiii) provided for a reassessment of real estate in the year 1905, and every fifth year thereafter, and section 172 required the General Assembly to provide for the special assessment of coal and mineral lands.

Now, when the assessments here complained of were made, sections 441 and 472 of the Code of 1887, as amended by Acts 1889-90, p. 137, c. 180 (Code 1904, pp. 234, 246), were in force and effect.

Section 441, prescribing the duties of assessors appointed under section 437 in accordance with the requirements of section 171 of the Constitution, is as follows:

"The assessors shall, immediately after their appointment, proceed to examine all the land and lots, with the improvements thereon, within their respective counties, districts, and corporations and shall, upon such examination, ascertain and assess the cash value thereof, and at the same time shall note whether the owner is white or colored. In performing such duties the assessors shall be governed by and comply with the provisions of section four hundred and seventy-two of the Code of Virginia as if the same by its terms were made specially applicable to them."

And section 472, as amended, is as follows: "If the surface of land is held by one person and the standing timber, trees, minerals, mineral water, or oil under the surface be held in fee simple by another, the commissioner shall determine the relative value of each and shall assess the several owners with the value of their respective interests. If the surface and standing timber trees, minerals, mineral waters, or oil be owned by the same person the commissioner shall ascertain the value of the land, inclusive of the standing timber trees, minerals, mineral waters, or oil, and assess the same at such ascertained value. The commissioner shall

make the assessment under the provision of chapter twenty-three."

These two sections plainly provided for the separate assessment and taxation of standing timber, and remained in force without effort to amend or repeal them until December 10, 1903, when the Legislature made the attempt to amend chapter 23 of the Code of 1887 (Code 1904, p. 231), for the reassessment of real estate in accordance with the general and special provisions of sections 171 and 172 of the present Constitution, and, among other things, in the attempted amendment of section 441, the words, "In performing such duties the assessors shall be governed by, and comply with, the provisions of section 472 of the Code of Virginia as if the same by its terms were made specially applicable to them," added by the amendment of 1889-90, were omitted; and by another act of December 10, 1903 (Acts 1902-03-04, p. 643, c. 417), the attempt was made, among other things, to repeal section 472, which, as will be noted, was the section prescribing the duties of the assessors where the surface of land was owned by one person and the minerals, etc., and standing timber trees by another; but both of these acts of December 10, 1903, failed of their passage by reason of the fact that they did not receive the vote required by the Constitution. See Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401. The result was that sections 441 and 472, as amended by the act of 1889-90, *supra,* remained the law in this state until the timber involved in this case, as we shall presently see, had been regularly assessed in the year 1905 and subjected to taxation under section 447 of the Code of 1887 (Code 1904, p. 237) on the basis of that assessment.

Conceding, therefore, for the purpose of this case, that the act of March 17, 1906, repealed section 472 of the Code as amended by the act of 1889-90 *supra,* still, if there is no other legislation invalidating assessments made under the former statute (and we have been pointed to none), such an assessment remains valid and enforceable.

In the answer filed on behalf of the commonwealth and the county of Brunswick in this case, we find this statement: "That in the year 1905 the assessors appointed for the said county of Brunswick in making the assessment of lands and lots within the said county for the year 1905, as provided by law, determined the relative values of the lands on which the said timber trees were standing and of the said timber trees, and assessed the several owners with the fair market value of their respective interests; that is to say, the said assessors assessed the owners of the said lands with the value of said lands exclusive of the said standing timber trees, and the said Camp Manufacturing Company with the value of said timber trees, and that the said timber

trees, or the value thereof, are not otherwise assessed for taxation for state or county purposes." And we further find in the record the following agreed statement of facts signed by counsel for the respective parties to this controversy, to wit: "It is agreed by the counsel for the parties hereto that the facts stated in the answer filed by the commonwealth and the county of Brunswick are true, so far as they relate to the title of the Camp Manufacturing Company to the standing timber upon which the taxes mentioned in the notices of the motions have been assessed and levied, to the time and method by which the Camp Manufacturing Company became the owner of said standing timber; and to the separate listing, assessment, and taxation of said timber from the surface of the land upon which the said timber is standing. In agreeing to the above facts, however, the counsel for the Camp Manufacturing Company does not admit any conclusion of law stated in said answer, but, in so far as any conclusion of law is stated in said answer, he controverts the same."

Thus we have a conceded state of facts showing that while sections 441 and 472, as amended by the act of 1889-90, *supra,* were the law as to the duties of assessors, and authorized the separate assessment of standing trees, the assessment here in question was regularly made in the year 1905; that is, the defendant in error was assessed with the value of its interest in the standing timber, while the owners of the surface of the land were assessed with the value of the land, and the value of this standing timber was not when the regular assessment was made in 1905 otherwise assessed for taxation for state or county purposes. This assessment became the basis of taxation in the county of Brunswick in 1906 and thereafter, and accordingly the taxes and levies here in question for the years 1906 and 1907 were levied; the assessment having been made by an assessor regularly appointed under section 171 of the Constitution and the statute conforming thereto and remaining in force carrying the same into effect, while in the case of Vansant, Kitchen & Co. *v.* Commonwealth, *supra,* the assessment was made by the commissioner of the revenue, but when does not clearly appear, and the taxation in question based thereon.

The assessment made in that case was without authority, for the commissioner of the revenue had no power to make any assessment of standing trees separate and apart from the land, and such authority was never conferred upon a commissioner of the revenue until the act of February 21, 1906. (Acts 1906, p. 38, c. 50), which was repealed by the act of March 17, 1906.

In that case it also did not appear whether the value of the timber was included in the assessment of the land, while in the case here, as we have seen, on the agreed facts, the assessment

of the defendant in error's standing trees, regularly made in 1905, must be treated as valid, otherwise its interest in this standing timber must escape all taxation for at least the years 1906 and 1907.

The language of the statute prescribing the duties of the assessors appointed to make the assessment in 1905, and which was in force when the assessment here complained of was made, provided that the assessor in performing his duties should be governed by and comply with the provisions of section 472 of the Code, the language of which is clear and explicit as to his duties, namely: "If the surface of land is held by one person and the standing timber trees * * * be held in fee simple by another * * * (he) shall determine the relative value of each, and shall assess the several owners with the value of their respective interests."

The statutes in force in 1905, when the separate assessment of the timber in this case was made, were in their force and effect preserved by section 1 of the schedule of the Constitution, which provided that the common law and the statute law, so far as not repugnant thereto, or repealed thereby, should remain in force until they expired by their own limitation, or were altered or repealed by the General Assembly. The property of the defendant in error having been listed and assessed in 1905 pursuant to the statute then in force, we know of no principle upon which the assessment so made does not furnish the proper basis for taxation for 1906 and 1907.

No such question arose in the case of Vansant, etc., *v.* Commonwealth, *supra,* and, while the opinion in that case correctly stated that upon the passage of the act of March 17, 1906, all authority ceased to tax trees separate and apart from the land upon which they stand, meaning upon an assessment made by a commissioner of the revenue, there is nothing whatever in the opinion having the effect to invalidate or discredit assessments of standing trees theretofore regularly made by authority of law, and the act of March 17, 1906, affected the method of assessing standing timber separate and apart from the land, even by the commissioners of the revenue, only prospectively, and did not affect the validity of an assessment regularly made in 1905 by assessors appointed and acting under sections 441 and 472 of the Code, as amended by the Acts of 1889-90, *supra.* There is nothing in the act itself evincing a purpose on the part of the Legislature to invalidate any previous assessment. On the contrary, the real purpose of the act was to validate previous assessments. Not having evinced a purpose to invalidate prior assessments by the act of March 17, 1906, it is needless to discuss the question whether the Legislature had the power, if it had so intended, to

invalidate assessments so as to relieve timber owners from the payment of taxes for the five years next following 1905, and thereby create an exemption from taxation, in violation of the express provision of section 183 of the Constitution of 1902 (Code 1904, p. cclxvii).

"But in general, when a tax system is revised, with a repeal of the former law, it is safe to assume that the legislative intent is that the new enactment shall be of prospective force only, and shall not disturb existing valid assessments." Cooley on Taxation (3d Ed.) pp. 21, 22.

In support of this statement the case of Warren R. Co. *v.* Belvidere, 35 N. J. Law, 587, is cited, in which, speaking of a tax law which was repealed after the tax was laid, it was said: "Such repeal does not affect the tax assessed. That was a matter closed by the assessment, and, besides, has been concluded by final judgment since the repeal." In that case the collection of the tax was provided for, not by the law which was repealed, but by a general law which remained in force.

The case of State *v.* Waterville Savings Bank, 68 Me. 515, was also cited. In that case an assessment for which an action was given was held to remain collectible, notwithstanding the repeal of the statute under which it was laid. See, also, Smith *v.* Auditor General, 20 Mich. 398.

It is argued that to uphold the tax in this case upon the record presented would be to require standing timber trees in the county of Brunswick and one adjoining county to bear a burden of taxation when standing timber trees in other counties of the state would escape taxation.

We are unable to see the force of this contention. The hardship would come, as it would seem, upon the taxpayers of other counties whose lands have doubtless been assessed upon a valuation including the standing timber thereon, and are being regularly taxed year by year upon that assessment, while not so in the county of Brunswick; and, if defendant in error could be relieved of the taxes of which it here complains, it would escape taxation upon its valuable property in that county until another assessment thereof is made under authority of law.

Counsel for defendant in error further argues that as the former Constitution did not expressly authorize it, and section 172 of the present Constitution requires the General Assembly to provide for the special and separate assessment of all coal and other mineral lands, and does not authorize a special assessment of standing timber, the conclusion is inevitable that the Legislature had no constitutional authority to amend section 472 of the Code so as to authorize the separate assessment of standing timber; but we are unable to see the force of this contention. The

provision of the Constitution which is referred to further provides that, until such special assessment is made, the land shall be assessed under general laws. The special assessment therein referred to and provided for does not necessarily exclude the assessment of standing trees as a part of the valuation of the land upon which they stand, and there can be no conceivable reason why the Legislature may not as it did by the amendment to section 472 of the Code prescribe the method of the valuation of land and the standing timber thereon separately, where the timber was owned by one person and the land by another. We can see nothing in the present or former Constitution which inhibits the Legislature from making such a provision.

When the Legislature by its act approved March 12, 1908 (Acts 1908, p. 331, c. 220), provided, as did the act of February 21, 1906, repealed by the act of March 17, 1906, for an assessment by the commissioners of the revenue of the several counties, at shorter intervals than five years, of standing merchantable timber trees separate and apart from the land upon which the trees are standing, where the timber trees are owned by one person and the surface of the land by another, it was not, as counsel for defendant in error contends, in recognition of the fact that there was no authority of law for such an assessment, but was merely intended to change the agency of the state to make the assessment and the duration thereof as the basis of taxation. There is not a word in that statute to indicate a purpose to invalidate an assessment made as in this case, and hence the statute has no bearing upon the question we are considering.

Upon the whole case we are of opinion that as the assessment complained of was validly made in 1905, and the assessment stands as the basis of taxation until the reassessment to be made the fifth year thereafter, namely, 1910, unless the Legislature in the exercise of its power shall see fit to relieve the defendant in error and others similarly situated from taxation based upon that assessment, the judgment of the circuit court complained of is wrong, and must therefore be reversed, and this court will enter such judgment as the circuit court should have entered, dismissing the petitions of the defendant in error, with costs to plaintiffs in error.

Reversed.

Note.

This case holds that the mere repeal of an assessment statute does not affect the validity of assessments already made thereunder, or prevent the collection of taxes on such previous assessment, and intimates a doubt as to whether the legislature, even had it expressly declared its intention to invalidate such assessment, had the power thus indirectly to create an exemption from taxation until another assessment could be made. The decision here is no doubt a correct

one, as there is a distinction between a repeal of a statute conferring the authority to collect as well as assess, which is held to invalidate an assessment thereunder, and a repeal of a statute such as this, which merely relates to the assessment. See 26 Am. & Eng. Enc. of Law, 752, 753. See, in addition to cases cited in opinion, Pacific, etc., Co. *v.* Com., 66 Pa. St. 70, where a repeal of a taxing statute expressly prospective in its effect, was held not to affect the collection of taxes assessed thereunder. See also, Hooper *v.* State, 141 Ala. 111.

This decision also answers in the affirmative the question asked by a correspondent in 14 Va. Law Reg. 394, as to the taxability of standing timber separately from the land, although in a manner entirely different from that contemplated by correspondent. The court does not touch the question there raised as to the constitutionality of the act of March 12, 1908, giving the commissioners of the revenue in the several counties authority to assess standing timber separately from the land, but does declare the similar statute (§ 472 of the Code as amended) to be valid and constitutional under § 172 of the Constitution (1902). The court seems to have made an attack from the rear upon the position taken by correspondent, by explaining and limiting the decision in Vansant *v.* Com., 108 Va. 135, 60 S. E. 753, so as to destroy the natural inference drawn by him from that decision, that, "upon the passage of the act of March 17, 1906, all authority ceased to tax standing timber trees separate and apart from the land upon which they stand," and confine it to the authority of commissioners to lay such assessments.

As to the constitutionality of that and the prior statute of Feb. 21, 1906, conferring a similar authority upon the commissioners, there seems no doubt, but, without entering into any discussion thereof, the writer must confess that he does not see on what correspondent bases his assumption that the constitution of 1902 expressly prohibits the legislature from authorizing the assessment of standing timber by commissioners of the revenue, *although* such timber *is real estate.* He quotes § 171 of the constitution, but that does not say how or by whom the assessment is to be made, and seems to give a large discretion to the general assembly. It merely says that "the general assembly shall provide for" the reassessments of real estate.

However that may be, inasmuch as Com. *v.* Camp Mfg. Co., expressly holds now that where standing timber was separately assessed by assessors prior to the act of March 17, 1906, whether that act repealed § 472, the law authorizing such assessments, or not, as to which quære, such assessment is still valid, and such standing timber now liable to taxation thereunder, and will be so liable under such assessment, in default of further legislation, until 1910, it would seem highly advisable if not necessary, that there should now be legal authority for making such assessments.

It is worthy of note also that it has been held that the interest of one person in standing timber on the soil of another was separately assessable, as an interest in real estate, to the former, where the law required land to be assessed to the owner. See Fox *v.* Pearl River, etc., Co., 80 Miss. 1, 31 So. 583. See also note in 17 L. R. A., N. S., 693.

And if § 437a is valid, as it now stands, as an authority to commissioners to assess *separate mineral interests,* then why cannot the legislature confer a similar power on the commissioners in regard to *timber interests?* The need is similar, and if these statutes are not valid, we will have timber interests, separately assessed by assessors in 1905, subject to taxation until 1910, and other such interests, not then assessed or passed into separate ownership since, without any

way of being assessed for taxation as such until 1910. It is hard to see any reason why § 437a, as amended and re-enacted, and § 472, if it is still in force, and the act of March 12, 1908, do not all stand on the same basis as to the constitutional power of the legislature to enact them.

As to whether § 472 was impliedly repealed by act of March 17, 1906, amending § 437a, as is conceded to be doubtful in the principal case, the only ground for thinking so is what is said in the Vansant case as to that act being intended to embrace all the legislation on the subject. But the court there was only considering it with reference to a previous amendment of the same section at the same session, and § 472 does not seem to have been in the mind of the court. Certainly it is not referred to. It seems reasonable to suppose that the very reason for the second amendment, restoring § 437a as it stood at first, may have been that it had been realized that § 472 already covered the ground and that to incorporate a similar provision into § 437a was to invite confusion and discord. And it lends weight to this as the proper solution, that it had just been discovered that the attempted re-enactment of chapter 23 by act of Dec. 10, 1903, leaving the reference to § 472 out of § 441, and the attempted repeal of § 472 by act of same date, were probably ineffectual (as was shortly afterwards held by the court of appeals in Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401), and consequently that § 472 was *still in force* (see principal case), and then the legislature, by reamending § 437a restored it to its former state to conform to the revived § 472, which was restored to the code by the above decision. It would thus seem clear that § *472 is still in force,* as the repealing act was never re-enacted, although the other act of Dec. 10, 1903, was. Then came the act of March 12, 1908, passed to remedy the supposed want of such authority in the commissioners of the revenue as declared in the Vansant case, decided the same day the act passed, so that now, by the effect of the Vansant decision, we either have two statutes covering the same ground, i. e., § 472 and the statute of March 12, 1908, or the latter has repealed the former by implication, and there is much stronger ground for considering it a repeal than there was for giving that effect to the act of March 17, 1906.

It is late to be raising this point, when the Vansant case has just been reaffirmed by the principal case in what is stated to be its true holding, but a reading of the case makes the writer wonder why the court in each case says that authority to assess standing trees separate and apart from the land "was never conferred upon a commissioner of the revenue until the act of Feb. 21, 1906 (acts 1906, p. 38, c. 50), which was repealed by the act of March 17, 1906," both amendments of § 437a. At least that is what the court in Com. *v.* Camp Mfg. Co. says was intended as the holding in the Vansant case. In the opinion in the principal case, § 472 of the Code, as amended by acts 1889-1890, is quoted at large, with its *command* to the *commissioner* (of the revenue) to *assess standing timber, etc., separately, where separately owned,* and it is stated positively that this section (472) and § 441, as amended by acts of 1889-1890, were both *continuously in force from* the passage of the act of *1889-1890 until* the act of March 17, *1906,* even if it was then repealed by that act. It is true the court refers to § 472 as prescribing the duties of the "assessors," but is this correct in the face of what that section says? In the Vansant case it is said that all authority (of the commissioner of the revenue) to tax trees separate and apart from the land *ceased upon the passage* of the act of March 17, 1906, and we are told in Com. *v.* Camp Mfg. Co. that such authority had *never been conferred until* Feb. 21, 1906. Truly such

authority of the commissioner was *very brief* according to this! The Vansant case ignores § 472 entirely and plants itself merely upon § 437a and its amendments. It does seem, with all respect to the court, that § 472, as amended, *did* confer authority on the commissioners to make such separate assessments, from 1889-90 to 1906 certainly, and perhaps to the present day, without additional legislation.

To recapitulate upon this point, the Vansant case was undoubtedly right in the construction it placed upon § 437a and its amendments, but the writer must confess to an inability to see why § 472, as amended in 1889-90, was not even referred to, as it seems to have been authority for such an assessment by commissioners of the revenue as was under consideration, from 1889-90 continuously to 1908. At least if it was not, an explanation of why it was not would be gratefully received. The principal case, it is true, proceeds upon the same assumption, but, while it notices § 472, it gives no intimation of why it did not apply in the Vansant case. It may seem density on the part of the writer, but it is an honest doubt that asks enlightenment, for here we have § 472, as amended 1889-90, authorizing and commanding commissioners of the revenue to assess separate timber interests to the true owners, and in 1903 this section was repealed by an act afterwards held (1906) to have been invalid, so that, as declared in the principal case, it was continuously in force at least until the legislature, in 1906, inserted a similar provision in § 437a. Section 437a was reamended within a month as it was before, leaving out this provision, probably because the legislature recognized § 472 as still in force, and yet it is declared in the Vansant case and the principal case that no authority was ever conferred upon a commissioner of the revenue to make any separate assessment of standing trees until this amendment of § 437a, which continued in force for less than a month, and that all such authority then terminated until the act of March 12th, 1908, which again provided for such assessment. J. F. M.

PEOPLE'S PLEASURE PARK CO. *v.* ROHLEDER.

March 11, 1909.

[63 S. E. 981.]

On rehearing. Denied.

For former opinion, see 61 S. E. 794, 14 Va. Law Reg. 548.

BUCHANAN, J., A decree was rendered in this cause on the 11th day of June, 1908, which upon a petition to rehear was set aside.

Upon a careful consideration of the case upon the rehearing we find no occasion to depart from the conclusion reached upon the original hearing.

For the reasons given, and upon the authorities cited, in the opinion then delivered, the decree entered at that time is approved, and will be adhered to.